THE CITY OF REDMOND
OFFICE OF THE MAYOR
ROSEMARIE M. IVES, Mayor

MEMO TO: City Council

FROM: Rosemarie Ives, Mayor

DATE: October 18, 2005

SUBJECT: **ORDINANCE: ADOPT REGULATIONS AND AMENDMENTS RELATING TO UNIT LOT SUBDIVISIONS AND DOWNTOWN ADMINISTRATIVE DESIGN FLEXIBILITY**

I. RECOMMENDED ACTION

Adopt the Planning Commission's recommended regulations for Unit Lot Subdivisions and amendments to the Downtown Administrative Design Flexibility regulations as shown in Exhibit 1 of Attachment A.

II. DEPARTMENT CONTACT PERSONS

Roberta Lewandowski, Director, Planning and Community Development, 425-556-2447
Judd Black, Development Review Manager, 425-556-2426
Gary Lee, Senior Planner, 425-556-2418

III. DESCRIPTION/BACKGROUND

The Planning Commission Report recommending adoption of this regulation was transmitted to the City Council September 6, 2005. (The first portion of that report is included as Attachment D. The full report can be reviewed under archived Council agendas at www.redmond.gov/insidecityhall/citycouncil/agendas.asp)

The amendment is recommended because it (a) encourages a new type of ownership housing in downtown Redmond, that has some of the benefits of fee simple, single family ownership, as well as some of the economies of shared wall construction and common maintenance, and (b) extends administrative design flexibility to smaller properties. Some potential owners would find the individual ownership of a townhouse and its underlying lot as more attractive than a condominium, giving each owner more control of one's individual dwelling. Since most of the new housing in downtown Redmond in the last few years has been rental housing, staff is interested in providing additional incentives for ownership housing.

During the September 6 Council meeting on this topic, some Council members raised questions about the effect of this ownership type on the rights of future owners regarding construction defects. Attachment B is the City Attorney's description of protections for

potential homeowners for single family versus condominium housing. The attorney's memo points out that both forms of ownership provide some protection against construction defects, and tend to favor the homeowner. However, the memo also points out that the liability of condominium developers for construction defects is much greater than for developers of other types of housing. Attachment C, an email from Robert Pantley, provides another perspective on the issue.

IV. IMPACT

Service Delivery and Fiscal Impact: Staff does not anticipate a significant difference in service delivery needs or fiscal impacts under the recommended amendments. The unit lot subdivision provision may encourage the development of lower scaled townhouse developments, at a faster rate than some single-family detached developments and/or larger condominium building projects; however, the provisions would not allow or encourage projects that are not already allowed by the existing land use regulations. The individual ownership would mean more utility connections, but the fees for connections and meters are set to recover costs.

V. ALTERNATIVES

A. **Adopt the Planning Commission's recommended amendment.** Adopting the new regulations establishing unit lot subdivisions as another exception to the subdivision regulations would enable attached townhouses in downtown and citywide to be subdivided into fee-simple lots under the individual townhouses, so the units can be sold as single-family attached units, as opposed to condominium units. Adopting the amendments to the Downtown Administrative Design Flexibility regulations, as recommended by the Planning Commission, would extend this flexible tool to smaller lots in the downtown, rather than allowing flexibility only for the larger lots. These amendments may encourage the development of such housing at a faster rate, as it allows the developer more design flexibility, as well as the ability to build and sell the units (as opposed to holding the project for rental). More housing downtown is desirable, although it will be at a lower density than stacked dwellings.

B. **Adopt one portion of the Planning Commission's recommended amendment.** The Planning Commission has recommended adoption of amendments to both the subdivision code (to allow the 'unit lot' subdivision) as well as revisions to administrative design flexibility. The Council could choose to adopt one or both of these amendments.

C. **Do not adopt the Planning Commission's recommended amendment.** Not adopting the Planning Commission's recommendation will result in no change. With

that, small scaled, individually owned townhouse projects (duplex, triplex, fourplex townhouse developments) could not be considered for approval in Redmond. Not adopting the unit lot subdivision regulations will continue to limit developers in regards to housing types they can produce as fee-simple, attached single-family units.

VI. TIME CONSTRAINTS

There are no time constraints. However, there is one project in the East Hill district of downtown that is waiting for this amendment as a potential development option.

VII. LIST OF ATTACHMENTS

Attachment A: Ordinance Amending the Redmond Community Development Guide
Exhibit 1: Recommended Amendments to the Community Development Guide
Attachment B: Memo from City Attorney
Attachment C: Email from Robert Pantley, original applicant for the amendment
Attachment D: Excerpt from Planning Commission report

Roberta Lewandowski, Planning Director — Date 10/6/05

Approved for Council Agenda: Rosemarie Ives, Mayor — Date 10/7/05

O:\gary\2005 downtown dga\unit lot subdivision ord memo3

ATTACHMENT A

00020.150.025
:jeh
09/06/05

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, RELATING TO UNIT LOT SUBDIVISIONS; ADDING NEW DEFINITIONS OF "LOT, PARENT," AND "LOT, UNIT," TO SECTION 20A.20.120 OF THE REDMOND MUNICIPAL CODE AND COMMUNITY DEVELOPMENT GUIDE; ADDING A NEW SUBSECTION 20D.180.10-060(6) GOVERNING THE APPROVAL OF UNIT LOT SUBDIVISIONS; AMENDING SECTION 20C.40.40-030 REGARDING ADMINISTRATIVE DESIGN FLEXIBILITY FOR UNIT LOT SUBDIVISIONS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in order to provide for greater flexibility in the development of residential land within the City and to better provide for the City's housing needs, planning staff has proposed that the City authorize unit lot subdivisions in which unit lots may be created under separate residential units in a single or multiple buildings, and

WHEREAS, the Redmond Planning Commission held at least one public hearing on proposed amendments to the Redmond Municipal Code and Community Development Guide in order to authorize such subdivisions and has recommended to the City Council that such amendments be approved, and

WHEREAS, the City Council has considered such amendments in a public meeting and has determined to approve those amendments set forth in this ordinance, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. New definitions of "Lot, Parent," and "Lot, Unit," are hereby added to Section 20A.20.120 of the Redmond Municipal Code and Community Development Guide to read as set forth on Exhibit 1 to this Ordinance, which exhibit is incorporated herein by this reference as if set forth in full.

Section 2. Unit Lot Subdivisions. A new Subsection 20D.180.10-060(6) entitled "Unit Lot Subdivisions" is hereby added to the Redmond Municipal Code and Community Development Guide to read as set forth on Exhibit 1 to this Ordinance, which exhibit is incorporated herein by this reference as if set forth in full.

Section 3. Administrative Design Flexibility. Section 20C.40.40-030 of the Redmond Municipal Code and Community Development Guide is hereby amended to read as set forth on Exhibit 1 to this Ordinance, which exhibit is incorporated herein by this reference as if set forth in full.

Section 4. Severability. If any section, sentence, clause, or phrase of this ordinance, or any provision the Redmond Municipal Code and Community Development Guide adopted or amended hereby, should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or any Redmond Municipal Code or Community Development Guide provision adopted or amended hereby.

Section 5. Effective Date. This ordinance, being an exercise of a power specifically delegated to the city legislative body, is not subject to referendum, and shall take effect five days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND

_____

ROSEMARIE IVES, MAYOR

ATTEST/AUTHENTICATED:

_____

MALISA FILES, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
SIGNED BY THE MAYOR:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.: _____

UNIT LOT SUBDIVISION PROVISION

Add below to 20D.180.10-060 – Exceptions to Lot Standards

(6) Unit Lot Subdivisions. The provisions of this section apply exclusively to the unit subdivision of land for townhouses that have land use approval through either Site Plan Entitlement, RCDG 20F.40.130; Planned Residential Development, RCDG 20C.30.105; Planned Commercial Development, RCDG 20C.60.60 or Innovative Housing Demonstration Project. The purpose of this provision is to allow for the creation of unit lots under each separate residential unit while applying site development standards to the building(s) on the parent lot, as a whole, instead of to the individual unit lots created subsequent to Site Plan Entitlement approval.

(a) Sites developed or proposed to be developed with townhouses may be subdivided into individual unit lots. The development as a whole shall conform to the regulations of the zone the site is in and plans granted approval through either Site Plan Entitlement, RCDG 20F.40.130; Planned Residential Development, RCDG 20C.30.105; Planned Commercial Development, RCDG 20C.60.60, or Innovative Housing Demonstration Projects. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the site development standards based on analysis of the individual unit lots. Each unit lot shall comply with respective building codes. Fire protection for the buildings shall be based on the aggregate square footage on the parent lot.

(b) Internal vehicular courts and driveways providing vehicular access to unit lots in the subdivision from public streets shall not be considered public or private streets when considering subdivisions under these provisions.

(c) Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.

(d) Access easements, joint use and maintenance agreements, and CC&Rs identifying the rights and responsibilities of property owners and/or the homeowners association shall be executed for use and maintenance of common garage, parking, and vehicle access areas; underground utilities; common open space (such as common courtyard open space); exterior building facades and roofs; and other similar features, and shall be recorded with the Director of the King County Department of Records and Elections.

(e) Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use the parking is formalized by an easement on the plat or short plat, as recorded with the Director of the King County Department of Records and Elections.

(f) The minimum residential density required for Unit Lot Subdivision in the Sammamish Trail and Town Square districts of Downtown shall be 35 dwelling units per acre. There

shall be no minimum residential density requirement for Unit Lot Subdivisions elsewhere in the City unless required by the zone in which the site is located.

(g) Notes shall be placed on the face of the plat or short plat as recorded with the Director of the King County Department of Records and Elections to acknowledge the following:

(i) Approval of the design of the units on each of the lots was granted by the review of the development, as a whole, on the parent lot by Site Plan Entitlement, Planned Residential Development, Planned Commercial Development, or Innovative Housing Demonstration Project (stating the subject file application number).

(ii) Development, redevelopment, or rehabilitation of structures on each unit lot is subject to review and approval of plans that are consistent with the design of the surrounding structures on the parent lot as approved by the City through (subject file number as stated in (i) above).

(h) The unit lot subdivision regulations set forth in this subsection (6) shall not apply in the Perrigo's Plat subarea of the East Hill District of Downtown unless and until such time as the design standards proposed in the Development Guide Amendment commonly known as the 2005 Downtown DGA, City File No. L050276, are adopted and effective.

(i) The unit lot subdivision regulations set forth in this subsection (6) shall automatically expire and be repealed three years from the effective date of the first ordinance adopting this subsection (6), unless further action is taken by the Redmond City Council to extend the same.

Add New Definitions as follows

NEW DEFINITIONS – SECTION 20A.20.120

Lot, Parent.
The initial lot from which unit lots are subdivided for the exclusive use of townhouses.

Lot, Unit.
One (1) of the individual lots created from the subdivision of a parent lot for the exclusive use of townhouses.

Revise Section 20C.40.40-030 as follows

20C.40.40-030 Administrative Design Flexibility (ADF).

The purpose of this section is to promote creativity in site layout and design, and to allow flexibility in the application of standards for commercial, office, retail, mixed use and residential development within the Downtown Neighborhood. The purpose is also to achieve the creation of sites and uses that may benefit the public by the application of special design policies and standards not otherwise possible under conventional development regulations and standards Departure from standards included in this section may be permitted as part of the Site Plan Entitlement process.

(1) Deviations from these standards may be allowed if an applicant demonstrates that the deviations from the standards would result in a development that:

(i) Better meets the intent of the goals and policies for the design area in which the site is located;

(ii) Is superior in design in terms of architecture, building materials, site design, landscaping and open space; and

(iii) Provides benefit to the Downtown Neighborhood in terms of desired use, activity, and design.

(2) ADF – Flexibility of Design Standards in Downtown. Requirements of RCDG Title 20C, Land Use Regulations that may be modified by application of this subsection are defined specifically as follows:

(a) Parking Lot Location. Requirements for the location of on-site parking lots may be modified within the development (except for parking within residential yard areas) to provide for greater joint-use and quasi-public parking opportunities and uses which are highly desirable in the subject design area.

(b) Mid-Block Pedestrian Walkways and Vehicular Lanes. Requirements for mid-block pedestrian and vehicular lanes per RCDG 20C.40.105, Downtown Pedestrian System, may be modified to allow variations in locations and minimum widths for these items to provide superiority in site design and function which benefits both the property owner and public.

(c) Street standards for townhouse subdivision developments.

(d) Other Site Requirements and Standards. All other site requirements and standards for Downtown except density, height and FAR may be modified within the development to provide superiority in site design: i.e., greater amounts of privacy, maintenance of views, preservation of vegetation, provision of usable open space, adequate light, air, and security. (Ord. 1901)

ATTACHMENT B

OGDEN MURPHY WALLACE
P.L.L.C.
ATTORNEYS AT LAW

MEMORANDU-M

DATE: September 28, 2005

TO: Mayor Rosemarie Ives and Redmond City Council
Judd Black
Gary Lee

FROM: James E. Haney

RE: Unit Lot Subdivision Ordinance - Comparison of Liability for Construction Defects Between Condominium Form of Ownership and Other Ownership Forms

---

At its September 6, 2005 meeting, the City Council requested that I provide some information concerning the liability of builders for construction defects in condominium projects as opposed to the liability for such defects in residential units sold under other forms of ownership, like the unit lot subdivision proposal. The following is my response to that request. As you will see when you review it, the condominium statutes place a significantly greater liability burden on condominium builders than the common (non-statutory) law of this state places on the builders of other forms of residential dwelling units.

LIABILITY OF RESIDENTIAL BUILDERS FOR CONSTRUCTION DEFECTS IN DWELLING UNITS OTHER THAN CONDOMINIUMS

The liability of residential builders for construction defects in dwellings other than condominiums is largely a matter of contract in Washington. Contract claims for such defects generally fall into one of three categories: (1) breach of the construction contract terms, where the residential builder custom builds the dwelling under a contract with the person who intends to reside there; (2) breach of express written warranties made in either a construction contract or a purchase and sale agreement between the builder and the person who intends to reside in the dwelling unit; and (3) breach of the "implied warranty of habitability" that courts read into all sales contracts between residential builders and the person to whom the dwelling unit is sold.

As you would expect, claims for breach of contract terms and for breach of express written warranties create pretty straightforward issues for the courts and the courts routinely enforce

contract terms and express warranties according to the language used.[1] A claim for breach of the implied warranty of habitability is somewhat more complicated. The common law principle of implied warranty of habitability imposes liability upon a commercial builder, i.e., a person regularly engaged in the business of building, in favor of the purchaser of a residential property for egregious defects in the fundamental structure of a home.[2] To prove a cause of action for breach of the implied warranty of habitability, a residential dwelling unit purchaser must show that he or she was the first purchaser-occupant of the dwelling, and that the alleged defect is so severe as to make the dwelling unit unfit for human habitation.[3] The implied warranty of habitability does not provide recovery for defects in exterior, non-structural elements like decks or porches, but does provide recovery for items like leaky roofs and defects in the building foundation.[4] Builders can disclaim warranties when selling dwelling units other than condominiums, including the implied warranty of habitability, and the court will enforce a clear and unambiguous disclaimer of warranties in a sales contract for such a unit.[5]

The statute of limitations on claims involving a breach of contract terms, a breach of an express warranty, or a breach of the implied warranty of habitability is six years from the date that the defect was discovered or should have been discovered and any suit based on a defect that is not discovered prior to the expiration of six years from the date of substantial completion of the dwelling unit is barred.[6]

LIABILITY OF RESIDENTIAL BUILDERS FOR CONSTRUCTION DEFECTS IN CONDOMINIUM DWELLING UNITS

As you can see from the above, the purchaser of a dwelling unit other than a condominium has a number of remedies against his or her builder for construction defects. Purchasers of condominiums have all of the same remedies and more. The statutes relating to condominiums specifically address additional express and implied warranties that must be given by a condominium builder.

---

1 *Port of Seattle v. Puget Sound Sheet Metal Works,* 124 Wn.2d 10, 213 P. 467 (1923); *Lyall v. DeYoung*, 42 Wn. App. 252, 711 P.2d 356, *review denied,* 105 Wn.2d 1009 (1975).

2 *Stuart v. Coldwell Banker Commercial Group, Inc.*, 109 Wn.2d 406, 416-17, 745 P.2d 1284 (1987); *House v. Thornton,* 76 Wn.2d 428, 434 (457 P.2d 199 (1969).

3 *Klos v. Gockel,* 87 Wn.2d 567, 569-70, 554 P.2d 1349 (1976); *Vigil v. Spokane County,* 42 Wn. App. 796, 714 P.2d 692 (1986).

4 *Id.*

5 *Frickel v. Sunnyside Enterprises, Inc.*, 106Wn.2d 714, 721, 725 P.2d 422 (1986)

6 RCW 4.16.040; RCW 4.16.310.

With respect to express warranties, the condominium statutes[7] provide that such warranties are created as follows:

> (a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use of have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;
>
> (b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to RCW RCW 64.34.410(1)(v);
>
> (c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and
>
> (d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

No formal words like "warranty" or "guarantee" are necessary to create the express warranties provided in this statute, nor does there have to be any specific intention on the part of condominium builder or developer in order to create them.[8] Under the statute, it is enough that there are written representations or descriptions of the indicated kind.

In addition to the express warranties described above, the condominium statutes also provide that certain warranties are implied in any condominium sale by the developer. These implied warranties are created as follows:

---

7 RCW 64.34.443(1).

8 RCW 64.34.443(2).

> (1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.
>
> (2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer are:
>
> (a) Free from defective materials;
>
> (b) Constructed in accordance with sound engineering and construction standards;
>
> (c) Constructed in a workmanlike manner; and
>
> (d) Constructed in compliance with all laws then applicable to such improvements.[9]

As you can see, these warranties are quite broad and are not limited to just structural defects that render the unit uninhabitable as a residence ("the implied warranty of habitability"). These implied warranties cannot be disclaimed by a builder of residential condominiums, except that a declarant or dealer

> may disclaim liability in writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) the declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.[10]

---

9 RCW 64.34.445.

10 RCW 64.34.450.

The owner of an individual unit in a condominium can file suit against a declarant or dealer for breach of these warranty obligations for up to four years after the cause of action accrues.[11] A cause of action for breach of warranty accrues, regardless of the knowledge of the purchaser: (1) as to any unit, on the date the purchaser took possession or the date of conveyance if a possessory interest was not conveyed; and (2) as to each common element, on the latest of (a) the date the first condominium was conveyed, (b) the date the common element was completed, or (c) the common element was added to the condominium.[12] Prior to filing any lawsuit, the owner must give notice to the declarant and dealer and an opportunity to cure the defect.[13] A condominium unit owners association can institute litigation against the declarant and/or dealer for breach of warranties where two or more units are involved and the association is bound by the same statutes of limitations and notice procedures as the individual owners.[14]

With regard to insurance, the condominium statutes do provide that, as an alternative to the declarant or dealer having liability for the express and implied warranties established as provided above, an insurance policy can be provided to the condominium purchasers (as to their units) and the condominium association (as to the common areas) that acts as a "qualified warranty" against damages caused by construction defects.[15] No insurer is mandated to provide such a policy, but if it is obtained for every unit and for all common areas in the condominium, the individual condominium developer can shift liability from themselves personally to that insurance policy. The policy must provide for a minimum two-year warranty on materials and labor, a five-year warranty on the building envelope, and a ten year warranty against structural defects.[16]

COMPARISON/CONCLUSION

As should be apparent from the analysis set forth above, the liability of condominium developers for construction defects is much more extensive under the condominium laws than is the liability of developers of other types of residential units. Condominium purchasers and their homeowners associations have a number of more explicit and implicit warranties as to the quality of their units and the common areas than do the purchasers of other types of residential units, who must look solely to the terms of their purchase contract and to the implied warranty of habitability for relief. Under the condominium laws, a condominium is defined as follows:

---

11 RCW 64.34.452.

12 *Id.*

13 *Id. See, also,* RCW 64.50.020.

14 RCW 64.34.304(1); RCW 64.38.020(4); RCW 64.50.040.

15 RCW 64.35.210

16 RCW 64.35.305 - .320.

> "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners., and unless a declaration and survey map and plans have been recorded pursuant to this chapter.[17]

It is my understanding of the "unit lot subdivision" proposal before the Council that this form of ownership structure would not qualify as a condominium under this definition because there would not be common elements that would be owned in undivided shares by the unit owners. Instead, the unit owners would own all of the structure and land associated with their unit and easements would be used for any utilities or other features that would have to cross boundary lines. Because a unit lot subdivision would not be a condominium, the various warranties that are provided under the condominium act would not apply and the property owners would have to sue for defects under any express warranties provided in their purchase agreements or under the implied warranty of habitability just as the owner of a single family home in a residential subdivision has to do. The owners of unit lots could certainly band together to sue a developer under these express or implied warranties if they each had the same defects or were each impacted, but they would not have the express authority given to condominium unit associations to sue as an association whenever two or more units are involved in an issue or wherever a common element is involved.

The above is a brief and certainly not exhaustive analysis of the liability of developers of condominiums and other residential units for construction defects. If you need more information or have specific questions, I'd be happy to answer them.

JEH:

---

17 RCW 64.34.020(9).

ATTACHMENT C

Gary Lee

From: Robert Pantley [robertpantley@comcast.net]
Sent: Monday, September 12, 2005 7:51 PM
To: Gary Lee
Cc: greg.clark@bullivant.com
Subject: Condominiums vs platting

Gary:

Per your request, here is a summation of the "effects" of the current laws for both condominium and platted properties. It is intended to be a balanced review.

If Jim Haney or you have any questions, Greg Clark, a specialist attorney in this field who has represented homeowners, insurance companies and builders would be happy to take your call. Greg Clark's direct line is:

206 521 6542. I am cc Greg as well if you would prefer to email him. Please tell Jim that I would have cc'd him but I do not have his email.

Thanks,

Robert

This paper discusses demonstrated consumer preference for platted (single family, townhomes, cottages) versus condominiums and the effect of that preference on the Growth Management Act in the State of Washington

Statistically, most people have always preferred single-family ownership, with even a small parcel of land, to condominium ownership.

However, the Growth Management Act limits the availability of land through the protection of rural areas, which continues to severely limit new single-family homes on the Eastside, including in Cities such as Redmond, Kirkland and Bellevue.

Currently families are faced with the tough choice between epic commutes from as far north as Mount Vernon, Arlington and Stanwood to their Eastside jobs, or living in a too small Condominium within an Eastside City. Unsurprisingly, most buyers have chosen the longer commute, which exacerbates nationally recognized bad traffic and erodes consumer faith in existing and inadequate public transportation. Our Eastside cities face the cost of the added traffic without the residential property and sales tax base to help support these expenses.

Builders are faced with tough choices too; either face a loss of insurance coverage, or huge increases in the cost of insurance. Both these problems are the result of hundreds of lawsuits created by the special residential condominium law bar. Currently builders have chosen to meet buyer demands and avoid liability by opting to build single-family homes farther and farther away from these Eastside cities.

The State of Washington's Legislature has created many options for purchasers to own their own affordable home including different forms of platting properties and condominiums. In the early 1990's the State Legislature passed new condominium legislation to respond to construction defects. A majority of the cost of these defects were due to mistakes in the design and construction of exterior cladding on buildings. Of these, one of the greatest problems has been the application of EIFS type systems, one infamous type which was known as "Dryvit." Since the new law took effect, many problems like this have been addressed and corrected. Other problems still exist as many abuses have occurred from the consumer side and many insurance companies have refused to insure contractors in Washington.

The condominium law has specific differences to that of single family and other platted residential ownership. While the law is constantly being amended , generally one key time parameter within the condominium law is that the statute of limitations is only four years from the completion and ownership of the first unit. However, another statute called the Statute of Repose, generally applies to all construction, including residential and commercial. The Statute of Repose provides consumers with a six-year statute of limitations. The six-year statute of limitations applies to any "express warranties" provided by the builder as well as to all implied warranties, such as Washington's implied warranty of habitability.

The difference between contractor law for condominiums versus all other forms of construction law is that in lay terms "condominiums require a standard of near perfection, and relies on certain "industry standards" that to date have never been defined and require a jury to establish these standards in each and every case based on "experts opinions" for condominium homes constructed many years before. In some cases, a defect can be simply that something was built differently even though it is performing and does not leak. Yet because the method does not conform to some plaintiffs' expert's definition of "industry standards", that method is often adjudged defective For most other types of homes "it is not up to a Jury to decide based on unwritten standards but rather upon whether the construction method has performed, i.e. does it leak or not. No leak no foul".

The effects of the condominium law has had mixed reviews depending on whom you would speak to i.e. the trial lawyers and their consultants who receive up to 50% of the awards given in the lawsuits or the contractors and insurance companies who have paid those awards. Regardless of whom you might listen to on these matters, all except a few insurance carriers (two or three) have quit providing insurance for condominiums in the State of Washington.

For those insurance carriers who do provide some kind insurance policy, we have seen many dramatic changes in the cost and type of coverage. In the year 1999, the cost of insurance per unit to a builder might be about $500 per unit. Today, with far less coverage the cost per policy is a minimum of $250,000 plus escalators that equal $15,000 to $20,000 per unit. Together with these coverages, the protection to the condominium purchaser has been dramatically reduced. Builders who may have carried $5,000,000 to $10,000,000 in builder's risk coverage are limited to a much smaller number such as $2,000,000 at a great disadvantage to larger communities. The effect of this is economic and tends to be irrefutable, though some might suggest otherwise through some type of "voodoo" economics. Hebert Research some years ago did a study that the average successful builder makes about 3-4% net on sales (pre-tax) over a period of years, which has been confirmed by lenders. Further, while some builders have succeeded for many years, Hebert Research stated that every five years 63% of single family and approximately 90% of multifamily builders go out of business. There is nothing that appears to have significantly changed that number. That is why insurance is so important. Yet under the past laws, the insurance protection has merely diminished but for condominiums, it has mostly disappeared.

Because of past condominium laws, today's consumers have far less insurance protection. Further, with 3-4% margins, builders cannot simply "absorb" the added costs of insurance. What has occurred is a significant reduction in the availability of condominiums to the consumer. Due to the reduction in supply, the demand "payment" has increased the costs of both single family and condominiums as homebuyers scramble to find housing for their families. It is not surprising that areas as far away as Stanwood are "booming" and the traffic through Everett and the Eastside worsens. For those condominiums that are built, we see many results of the past condominium law. The builders not only add on the cost of insurance but they also must include in their unit

pricing their added costs for their attorneys and accountants creating mostly individual "LLCs". Some of these LLC's have very elaborate structures to protect against predatory plaintiff's attorneys who routinely sue the builder's personally in order to use that threat as leverage. Regardless, of how one might feel about these legal strategies by the different legal groups several things can be observed:

- Homeowners have fewer choices, which has raised the price of homes for everyone, single family and multifamily alike.
- Insurance coverage for homeowners has been dramatically curtailed.
- There has been a significant loss of the communities "best builders" who refuse to face the almost certain dilemma that "if you build it they will sue".

In California, a similar law saw the reduction of condominiums from 125,000 per year to 4,500 (provided by NAHB) forcing families to make epic commutes. The losses by the insurance industry in California were overwhelming. After ten years of devastating results, the California legislature recently made wholesale amendments to their condominium laws. Even if the California laws are found to be "even handed" for all parties involved, it will take years for condo cases to wind through the court systems before the insurance carriers will be convinced to return to the market place and to allow reductions in their premiums

Washington faces similar results and at the prodding of different but unified groups like Thousand Friends of Washington (now Future Wise) and the King Snohomish County Master Builders, the State of Washington Legislature has made amendments to address some of the problems with our condominium laws. One such law is that beginning September 1, 2005, with few exceptions, disputes between the condominium homeowners and the builder must go to arbitration. This should reduce the costs of litigation and shorten the time to adjudicate disputes while providing a more rational decision on the issues than a lay jury could provide. This also is a great benefit to homeowners and builders alike who can have these disputes settled more quickly and "get on with their lives." However, it too will take years to establish the results and it is not clear how effective the results will be for the insurance carriers. Without the insurance, true protection of homeowners cannot exist.

As of this writing, one can observe that single-family builders are able to provide superior protection to their customers than any builder could possibly hope for to condominium homeowners. Insurance for single family projects costs far less and generally the coverage for new policies is better. Further, on average for the eastside neighborhoods, the better neighbor builders have focused their attention on single family both locally and farther away from our Eastside job centers leaving the self-insured or more "legalistic" builder to build for the consumer.

Simply put, the more local Cities can do to provide consumers with platted communities, the more housing options these local families will have. This effort should result in superior long term insurance protection and more home for the money and it will be consistent with the Growth Management Act and those Cities that believe in it.